

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION
3 IN THE MATTER OF:)
4 Consumers Illinois)
5 Water Company,)
6) No. 00 -0366
7 Petition for (1) issuance of a)
8 Certificate of Public)
9 Convenience and Necessity)
10 ("Certificate") to operate a)
11 water supply and distribution)
12 system and sewage collection)
13 system in Lake County; (2))
14 approval of accounting entries))
15 related to acquisition of)
16 facilities; (3) approval of)
17 application of rates.)
18)

19 Chicago, Illinois

20 November 9, 2000

21 Met, pursuant to notice, at 10:00 a.m.

22 BEFORE:

 Ms. Deborah King, Administrative Law Judge

1 APPEARANCES:
2
3
4 MR. JOHN REICHART and
5 MR. ANDREW HUCKMAN
6 160 North LaSalle Street
7 Suite C-800
8 Chicago, Illinois
9 appearing for Staff;
10
11 JONES, DAY, REAVIS & POGUE, by
12 MR. BOYD J. SPRINGER
13 77 West Wacker Drive
14 Suite 3500
15 Chicago, Illinois 60601
16 appearing for CIWC.
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18
19 SULLIVAN REPORTING COMPANY, by
20 Ann Rogers, CSR
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I N D E X

Witnesses:	Direct	Cross	Re - direct	Re- cross	By Judge
Mr. Bryan Sant	26	30			
Mr. Richard Ackman	52	54	71		
Mr. Terry Rakocy	76	81	87		

E X H I B I T S

	For Identification	In Evidence
CIWC:		
1.0, 1.0R,		
1.SR 1.0AS	22	81
CIWC: 2.0R	22	54
CIWC:		
Cross No. 1	31	52
Staff:		
2.0, 2.0A, 4.0,	21	25
1.0, 3.0P, 3.0R,		
and 5.0	21	30
6.0	21	87

1 (Whereupon, CIWC
2 Exhibit Nos. 1.0, 2.0R, 1.0R,
3 1.SR, and 1.0AS were
4 marked for identification.)

5
6 (Whereupon, Staff Exhibit
7 Nos. 1.0, 3.0P, 3.0R, 5.0,
8 2.0, 2.0A, 4.0 and 6.0 were
9 marked for identification.)

10 JUDGE KING: Pursuant to the authority of the
11 Illinois Commerce Commission I now call
12 Docket No. 00-0366. This is the petition of
13 Consumers Illinois Water Company.

14 May have the appearances for the record.

15 MR. SPRINGER: Boyd J. Springer of Jones, Day,
16 Reavis & Pogue 77 West Wacker, Suite 3500 Chicago,
17 Illinois 60601-1692 appearing on behalf of the
18 petitioner, Consumers Illinois Water Company. My
19 telephone number is (312) 269-4151.

20 MR. REICHART: John J. Reichart and
21 Andrew Huckman appearing on behalf of the Staff of
22 the Illinois Commerce Commission. Our address is

1 160 North LaSalle, Chicago, Illinois.

2 JUDGE KING: We're here today to commence with
3 our evidentiary hearing in this matter. I believe
4 there are some preliminary procedures that we need
5 to take care of.

6 MR. REICHART: Yes, ma'am Examiner. There is
7 currently an outstanding motion staff filed for
8 leave to file supplemental rebuttal testimony of
9 staff witness Bryan Sant. We filed this on Monday
10 November 6th along with supplemental testimony.
11 It's our understanding that the company has no
12 objection to this motion and, in fact, filed
13 responsive testimony to the testimony we filed and
14 staff has no objection to them entering that
15 testimony into the record as well.

16 JUDGE KING: All right. Let the record reflect
17 that staff's motion to file instant the
18 supplemental rebuttal testimony of Mr. Sant is
19 hereby granted and as well the additional
20 surrebuttal testimony of Mr. Rakocy is hereby
21 granted also.

22 MR. REICHART: And as a housekeeping matter we do

1 have one staff witness, Mr. Roy King, who by
2 agreement is not appearing at the hearing today but
3 rather will have his testimony entered by affidavit.
4 I would ask that I could identify that testimony for
5 the record at this time.

6 JUDGE KING: Yes.

7 MR. REICHART: Mr. King's direct testimony has
8 previously been marked as ICC Staff
9 Exhibit 2.0. In addition, ICC Staff Exhibit 4.0,
10 which is titled rebuttal testimony of Roy King, has
11 also been provided to the court reporter, finally,
12 ICC Staff Exhibit 2.0A, which is the affidavit of
13 Mr. King, in which he indicates that he is familiar
14 with the contents of the two prior exhibits and
15 those exhibits are true and correct to the best of
16 his knowledge we will be submitting as well.

17 JUDGE KING: Any objection?

18 MR. SPRINGER: No objection.

19 JUDGE KING: Those exhibits are hereby admitted.

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1 (Whereupon, Staff
2 Exhibit Nos. 2.0, 2.0A
3 and 4.0 were
4 admitted into evidence.)
5 MR. REICHART: Thank you.
6 JUDGE KING: That takes care of the preliminary
7 matters?
8 MR. SPRINGER: Yes, we're not aware of any other
9 preliminary matters.
10 JUDGE KING: Okay. And we will be proceeding
11 with the case of the staff first?
12 MR. REICHART: That's correct.
13 JUDGE KING: What I can do is just indicate or
14 ask that all witnesses who will be testifying here
15 today if you could raise your right hands.
16 (Witnesses sworn.)
17 JUDGE KING: Call your first witness.
18 MR. REICHART: Staff would call staff witness
19 Bryan Sant.
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1 BRYAN SANT,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. REICHART:

7 Q. Good morning, Mr. Sant.

8 A. Good morning.

9 Q. Would you please state your full name for
10 the record.

11 A. My name is Bryan Sant.

12 Q. Who are you employed by?

13 A. I'm employed by the Illinois Commerce
14 Commission.

15 Q. What is your business address?

16 A. My business address is 527 East Capital,
17 Springfield, Illinois 62701.

18 Q. Mr. Sant, what is your position with the
19 Illinois Commerce Commission?

20 A. I am an accountant, a staff accountant in
21 the Accounting Department.

22 Q. Thank you. Mr. Sant, did you prepare

1 testimony for submission in this docket at the
2 hearing today?

3 A. Yes, I did.

4 Q. I'd like to refer you to a document that has
5 previously been marked as ICC Staff Exhibit 1.0,
6 it's titled the direct testimony of
7 Bryan Sant. It consists of 12 typewritten pages and
8 4 schedules. Was this document prepared by you or
9 under your supervision?

10 A. Yes, it was.

11 Q. And you're familiar with the contents
12 thereof?

13 A. Yes, I am.

14 Q. Do you have any corrections or changes to
15 make to this document?

16 A. No.

17 Q. Is the information contained in this
18 document true and correct to the best of your
19 knowledge?

20 A. Yes, it is.

21 Q. I'd like to refer you next to a document
22 that has previously been marked as ICC Staff Exhibit

1 3.0P titled Proprietary Rebuttal Testimony of Bryan
2 Sant. It consists of 14 typewritten pages and 8
3 attached schedules. Are you familiar with this
4 document?

5 A. Yes, I am.

6 Q. Was this document prepared by you or under
7 your supervision?

8 A. Yes.

9 Q. Is the information contained in this
10 document true and correct to the best of your
11 knowledge?

12 A. Yes.

13 Q. Do you have any changes to make to this
14 document?

15 A. No.

16 Q. I'd like to refer you to what has previously
17 been marked as ICC Staff Exhibit 3.0R, which is
18 titled the Redacted Rebuttal Testimony of Bryan Sant
19 consisting of 14 typewritten pages. Once again, are
20 you familiar with this document?

21 A. Yes.

22 Q. Is the information contained in this

1 document true and correct to the best of your
2 knowledge?

3 A. Yes.

4 Q. Finally, I'd refer you to ICC Staff Exhibit
5 5.0 titled Supplemental Rebuttal Testimony of Bryan
6 Sant consisting of 5 typewritten pages and one
7 schedule. Are you familiar with this document?

8 A. Yes.

9 Q. Was it prepared by you or under your
10 supervision?

11 A. Yes.

12 Q. Is the information contained in this
13 document true and correct to the best of your
14 knowledge?

15 A. Yes.

16 MR. REICHART: Madam Examiner, at this time
17 subject to cross examination we would move for the
18 admission of ICC Staff Exhibits 1.0, 3.0P, 3.0R and
19 5.0.

20 JUDGE KING: Is there any objection?

21 MR. SPRINGER: No objection at this time, Madam
22 Examiner.

1 JUDGE KING: All right. Let the record reflect
2 that Staff Exhibits 1.0, 3.0P, 3.0R and 5.0 are
3 hereby admitted into the record and subject to
4 cross.

5 (Whereupon, Staff
6 Exhibit Nos. 1.0, 3.0P,
7 3.0R and 5.0 were
8 admitted into evidence.)

9 MR. REICHART: We tender the witness for cross at
10 this time.

11 CROSS EXAMINATION

12 BY

13 MR. SPRINGER:

14 Q. Mr. Sant, would you please first turn to the
15 reviewed Schedule 7 which accompanied your
16 supplemental rebuttal testimony. There you propose
17 an original cost for water plant of a negative
18 \$483,840; is that correct?

19 A. Yes.

20 Q. You also suggest they put two of the
21 schedule that if the use of the negative number or
22 plant would result in negative rate base, rate base

1 should be increased to zero; is that correct?

2 A. Yes.

3 Q. If rate base is zero there would be no
4 revenue requirement allowed in a rate case to
5 provide a rate of return; is that correct?

6 A. Besides the -- that is correct besides the
7 amount that is allowed for -- that is correct except
8 for the amounts that are allowed for the allowable
9 expenses.

10 Q. So that there could be revenue allowed to
11 cover expenses if I understand your answer; is that
12 correct?

13 A. Correct.

14 Q. But there would be no rate of return
15 component; is that correct?

16 A. That is correct.

17 Q. There would be no revenue allowed for a
18 return on common equity capital; would that be
19 correct?

20 A. Yes.

21 Q. And you agree, as indicated in your footnote
22 2, that a negative rate base would be inappropriate;

1 is that correct?

2 A. That is correct.

3 Q. The implication of a negative rate base
4 would be that the utility providing service would
5 pay a return component to the customers; would that
6 be correct?

7 A. I believe that is correct.

8 Q. And this would be a disincentive to a
9 potential buyer when determining whether to acquire
10 the utility involved; would that be correct?

11 A. I imagine it would be, I do not know that
12 for sure.

13 Q. Was there a policy reason for your view that
14 a negative rate base would be inappropriate?

15 A. I believe the view, as stated in other
16 dockets that I have referenced, where the Commission
17 has allow a zero rate base instead of a negative
18 rate base I believe that the reason -- the policy
19 reason for that would be to not allow
20 the -- so that there wouldn't be a disincentive to
21 investing in the utility.

22 Q. You reference in data responses prior orders

1 in which you believe that the Commission allowed a
2 zero rate base rather than negative rate base; is
3 that correct?

4 A. Yes.

5 Q. And is one of the cases you reference a Page
6 Utility Company, Docket 76-0437?

7 MR. REICHART: Mr. Springer, could you please
8 indicate the particular data request response you're
9 referring to so our record is clear?

10 MR. SPRINGER: Yes, it's the Response No. 1 to
11 the fourth series request.

12 THE WITNESS: Yes, 76-0437 is one that I
13 referenced.

14 BY MR. SPRINGER:

15 Q. In that case, would you agree that according
16 to Finding 7 of the order the original cost rate
17 base allowed was \$44,203?

18 A. I do not have that information, I do not
19 have a copy of that.

20 Q. Would you accept that subject to check?

21 A. Yes.

22 Q. You also referenced Countryside Utilities

1 Docket 82-0373; is that correct?

2 A. Yes.

3 Q. Would you accept that that case involved a

4 fair value rate base?

5 MR. REICHART: Can I have that reference again,

6 Boyd?

7 MR. SPRINGER: Docket 82-0373.

8 MR. REICHART: Right, what page?

9 MR. SPRINGER: The question is whether the order

10 allows a fair value rate base, it's in

11 Finding 8.

12 THE WITNESS: Yes, I agree.

13 BY MR. SPRINGER:

14 Q. And the fair value rate base was \$19,474; is

15 that correct?

16 A. Yes.

17 Q. Rate base was not zero in either case; is

18 that correct?

19 A. I believe the reason it was not zero in

20 these cases was because of the working capital

21 component, that after the -- that the net

22 before -- excuse me, the net plant component was

1 negative and it was allowed to be zero and then the
2 working capital component increased the rate base so
3 that it was above zero.

4 Q. You agree that the collective investment of
5 Thorngate and Mutual Services should be reflected as
6 original cost in the rate base calculation, is that
7 correct, in this proceeding?

8 A. Yes, it is.

9 Q. Thorngate exchanged 38 acres of land in
10 return for cash, the water system and other
11 infrastructure items; is that correct?

12 A. Yes, it is.

13 Q. You believe that Thorngate paid for the
14 water system and other infrastructure items with the
15 cost of its land exchanged for development net of
16 any cash received; is that correct?

17 A. Yes, it is.

18 Q. And you disagree with Mr. Rakocy's position
19 that Thorngate's investment is equal to the value of
20 the land exchanged in return for the water system;
21 is that correct?

22 A. Could you repeat that.

1 Q. I'll restate the question.

2 You disagree with Mr. Rakocy's position
3 that Thorngate's investment is equal to the value of
4 the land exchanged in return for the water system;
5 is that correct?

6 A. Yes, I disagree with that position.

7 Q. In your opinion, the value of the land
8 exchanged for the water system is not the pertinent
9 issue; is that correct?

10 A. That is correct.

11 Q. You are not aware of any information
12 pertaining to the market value of the land exchanged
13 by Thorngate; is that correct?

14 A. Correct.

15 Q. Accounting Instruction 18 of the Uniform
16 System of Accounts addresses the recording of
17 acquired utility plant; is that correct?

18 A. Yes, it is correct.

19 Q. Accounting Instruction 18 A states: All
20 amounts included in the accounts for utility plant
21 acquired as an operating unit or system shall be
22 stated at the cost incurred by the person who first

1 devoted the property to utility service; is that
2 correct?

3 A. Yes.

4 Q. For purposes of Accounting
5 Instruction 18, the word cost has the meaning stated
6 in Definition 9; is that correct?

7 A. Yes, that is correct.

8 MR. SPRINGER: I'm passing out a document which I
9 would ask be marked as CIWC Cross Examination
10 Exhibit No. 1.

11 (Whereupon, CIWC Cross
12 Exhibit No. 1 was
13 marked for identification.)

14 BY MR. SPRINGER:

15 Q. Mr. Sant, would you agree that the document
16 which has been marked as CIWC Cross Examination
17 Exhibit No. 1 contains language of Accounting
18 Instruction 18 on Page 1 and
19 Definition No. 9 on Page 2?

20 A. Yes, it does.

21 Q. And I believe you indicated that for
22 purposes of Instruction 18 the word cost is as

1 defined in Definition 9; is that correct?

2 A. I believe that is correct.

3 Q. The last sentence of the Accounting
4 Instruction 18A states: Where the term cost is used
5 in the detailed plan accounts it shall have the
6 meaning stated in this paragraph, see Definition 9,
7 correct?

8 A. Correct.

9 Q. Cost means the amount of money actually paid
10 for property related to utility service -- excuse
11 me, I'll start over.

12 Cost means the amount of money actually
13 paid for property or service. When the
14 consideration given is other than cash, the value of
15 such consideration shall be determined on a cash
16 basis; is that correct?

17 A. Yes.

18 Q. Please look at Accounting
19 Instruction 18D?

20 MR. HUCKMAN: I'd just like to clarify that when
21 he made that last statement he was agreeing with the
22 definition that appears in this exhibit. In other

1 words, he was merely rereading what was presented to
2 him in a cross exhibit.

3 MR. SPRINGER: Are you finished,
4 Mr. Huckman?

5 MR. HUCKMAN: Yes, I am.

6 BY MR. SPRINGER:

7 Q. Would you please refer to Accounting
8 Instruction 18B, does that instruction state: When
9 the consideration given for property is other than
10 cash, the value of such consideration shall be
11 determined on a cash basis?

12 A. Yes, that's how it reads.

13 Q. Under the Uniform System of Accounts, when
14 the consideration given for utility property is
15 something other than cash, the value of that
16 consideration is pertinent; is that correct?

17 A. That appears to be correct.

18 Q. When a utility acquires utility plant, the
19 Uniform System of Accounts indicates that the
20 original cost should be estimated if not known; is
21 that correct?

22 A. Yes.

1 Q. Please turn now to Page 4 of your rebuttal
2 testimony.

3 There you indicate at Lines 88 through 91
4 that the Commission has long held that cost born by
5 the developer but recovered through lot sales,
6 customer contributions and tax write-offs in the
7 form of land development costs should not be
8 included in plant fair value for fixing purposes,
9 correct?

10 A. Correct.

11 Q. You have no specific documents, records or
12 work papers which indicate that the Phase 2
13 developers recovered costs associated with the water
14 and/or sewer system through prices for lot sales,
15 customer contributions or tax write-offs, correct?

16 A. That is correct.

17 Q. Please turn now Schedule 2 of your Exhibit
18 1.0.

19 There you show water utility plant and
20 service on Line 1 of \$1,256,017; is this correct?

21 A. Yes.

22 Q. And turning to Schedule 4 of your exhibit,

1 that amount is the sum of what is shown on Schedule
2 4 under water system of the amount shown in columns
3 F, G and H; is that correct?

4 A. Yes, it is.

5 Q. One of the items included in plant and
6 service balance for water operations on Schedule 2
7 is contributions in the amount of \$483,840; is that
8 correct?

9 A. Yes.

10 Q. And that is the amount shown in
11 Column G, correct?

12 A. Correct.

13 Q. The remaining items, that being the amount
14 shown in Columns F and H, are portions of the
15 account balances shown on your Schedule 3; is that
16 correct?

17 A. That is correct.

18 Q. And these are the balances from Thorngate's
19 books for land waste water and land improvements
20 WWTS; is that correct?

21 A. It is the portion allocated from those
22 accounts from Schedule 3.

1 Q. At the time of your direct testimony you
2 proposed that these balances be allocated as
3 original cost to both water and sewer accounts as
4 shown in your Schedule 1; is that correct?

5 A. That is correct.

6 Q. And you agree now that at the time of your
7 direct testimony you misunderstood the makeup of the
8 two accounts shown on Schedule 3; is that correct?

9 A. That is correct.

10 Q. You now agree that Thorngate's accounting
11 records include only costs for the sewer system; is
12 that correct?

13 A. Yes.

14 Q. Aside from Schedule 3, you have no
15 accounting records, studies, work papers, analyses
16 or any other documents indicating the content of the
17 two accounts shown; is that correct?

18 A. That is correct.

19 Q. At the time of your direct testimony in
20 Schedule 2 you show sewer plant and service of
21 \$2,101,908; is that correct?

22 A. Yes.

1 Q. And as shown on Schedule 4, this amount is
2 the sum of Columns F, G and H in the sewer section
3 of that schedule; is that correct?

4 A. Correct.

5 Q. The balance of plant and service for sewer
6 operations at the time of your direct testimony
7 includes contributions in the amount of \$596,160; is
8 that correct?

9 A. Correct.

10 Q. In your rebuttal testimony you conclude that
11 the cost shown in Schedule 3 should be reflected
12 only as sewer plant costs; is that correct?

13 A. That is correct.

14 Q. And if we look now at Schedule 6 which
15 accompanied your rebuttal testimony you show there a
16 balance in account 353 of \$303,484 and
17 account 354 for structures and improvements a
18 balance of \$1,974,441; is that correct?

19 A. Yes.

20 Q. These numbers total \$2,277,925; is that
21 correct?

22 A. Correct.

1 Q. And that is the balance that you show as
2 sewer plant and service on Schedule 7 which
3 accompanied your rebuttal testimony and revised
4 Schedule 7 which accompanied your supplemental
5 rebuttal testimony; is that correct?

6 A. Correct.

7 Q. Going back now to Schedule 4, which
8 accompanied your direct testimony, the amount which
9 you show in Schedule 7 and revised
10 Schedule 7 -- are you there yet?

11 A. Yes.

12 Q. I'll start over.

13 The amount which you show in Schedule 7
14 and revised Schedule 7 as sewer plant and service is
15 the sum of Column F for water and sewer and Column H
16 for water and sewer as was calculated on Schedule 4;
17 is that correct?

18 A. Yes.

19 Q. The plant and service balance for sewer on
20 Schedule 7 and revised Schedule 7 does not included
21 contributions allocated to sewer in the amount of
22 \$596,160 as shown in Column G of Schedule 4,

1 correct?

2 A. Correct.

3 Q. As revised in your revised Schedule 7, which
4 accompanied your supplemental rebuttal testimony,
5 you exclude from water plant and service the water
6 contributions of \$483,840 shown in Schedule G --
7 excuse me -- shown in Column G of Schedule 4; is
8 that correct?

9 A. Yes, that is correct.

10 Q. That balance had been shown as plant and
11 service on revised schedule -- excuse me -- on
12 Schedule 7 prior to your revision; is that correct?

13 A. Yes.

14 Q. Now, as we discussed, your sewer plant and
15 service balance shown on revised Schedule 7 is
16 \$2,277,925; is that correct?

17 A. Yes, it is.

18 Q. Thorngate's records do not include a
19 breakdown of this balance into plant accounts of the
20 type shown on your Exhibit 1 Schedule 1; is that
21 correct?

22 A. That is correct, on Schedule 1 from Exhibit

1 I had allocated that total amount to the various
2 plant accounts.

3 Q. Please refer to the Page 2 of Schedule 1 for
4 the sewer system.

5 This would be a listing of the sewer
6 plant accounts; is that correct?

7 A. Yes.

8 Q. As provided in the Uniform System of
9 Accounts; is that correct?

10 A. Yes.

11 Q. There are force mains, gravity mains and
12 services in the Ivanhoe Thorngate sewer system; is
13 that correct?

14 A. It is correct from the best of my knowledge.
15 I took that from the survey that the company had
16 completed of the system.

17 Q. To your knowledge there would be force
18 mains, gravity mains and services in the system?

19 A. Yes.

20 Q. There are no accounting records indicating
21 what amount, if any, should be recorded in Account
22 360 for force mains, Account 361 for gravity mains

1 or Account 363 for services; is that correct?

2 A. Do you mean on Thorngate's records?

3 Q. Yes.

4 A. Yes, that is correct.

5 Q. You do not know the cost recorded in the
6 accounting records of Thorngate, if any, for pumping
7 equipment, Account 371; treatment and disposal
8 equipment, Account 380; or receiving wells, Account
9 370; is that correct?

10 A. That is correct.

11 Q. Yet these items do exist in the sewer
12 system, do they not?

13 A. I believe so.

14 Q. There are no balances shown in the
15 accounting records for power generation equipment,
16 Account 355; flow measuring devices, Account 364; or
17 plant sewers, Account 381; is that correct?

18 A. That is correct, Thorngate did not break out
19 their costs.

20 Q. Yet these items also exist in the sewer
21 system; is that correct?

22 A. As far as I can tell, yes.

1 Q. No balances are shown in the accounting
2 records for any of the accounts listed on your
3 Schedule 1 with the exception of Accounts 353 and
4 354, correct?

5 A. Correct.

6 Q. For the water system on your Schedule 6, you
7 show an account balance for Account 114 utility
8 plant acquisition adjustment, correct?

9 A. Correct.

10 Q. Referring again to your Schedule 1, this
11 time page 1 for the water system.

12 This is a listing of the water plant
13 accounts from the Uniform System of Accounts; is
14 that correct?

15 A. Yes.

16 Q. And would you agree that there are water
17 mains, services, meters and hydrants used in the
18 water system?

19 A. As far as I can tell.

20 Q. There would also be pumping plant water
21 treatment facilities; is that correct?

22 A. Yes.

1 Q. You would agree that there is nothing in
2 Thorngate's accounting records which would indicate
3 the original cost which should be recorded in any of
4 the accounts listed on your Schedule 1; is that
5 correct?

6 A. Correct.

7 Q. Referring now Schedule 2 of your
8 Exhibit 1.

9 Here you deduct contributions in aid of
10 construction for the water system in the amount of
11 \$483,840 and for the sewer system in the amount of
12 \$596,160; is that correct?

13 A. Yes.

14 Q. And we have already discussed that for
15 purposes of your direct testimony you included for
16 both the water system and the sewer system the same
17 contributions balance which you deducted as a
18 component of utility plant and service; is that
19 correct?

20 A. Yes, I originally did that.

21 Q. For the direct testimony, the net effect of
22 contributions on original cost plan for both water

1 original cost and sewer original cost was zero,
2 correct?

3 A. Correct.

4 Q. For your rebuttal testimony on Schedule 6
5 you included contributed property of \$483,940 in
6 determining water plant and service; is that
7 correct?

8 A. Schedule 7 or Schedule 6?

9 Q. I'm could refer to Schedule 7.

10 A. Yes, I did that on my original
11 Schedule 7.

12 Q. For purposes of Schedule 7, which
13 accompanied your rebuttal testimony, the net effect
14 of water contributions in the amount of \$483,840 on
15 your calculation of original cost plan for water was
16 zero; is that correct?

17 A. Correct.

18 Q. For sewer operations on rebuttal Schedule 6
19 you did not included contributions as a component
20 for plant and service, correct?

21 A. Schedule 7, that's right, I did not.

22 Q. So for purposes of Schedule 7, the effect of

1 contributions is to reduce original cost plan by
2 \$596,160; is that correct?

3 A. Correct.

4 Q. And that is also the case for the
5 calculation of sewer original cost on your revised
6 Schedule 7; is that correct?

7 A. For sewer and water on revised 7, yes.

8 Q. So just to make the record clear for revised
9 Schedule 7 for water operations the net effect of
10 contributions is to reduce original cost plan by
11 \$483,840; is that correct?

12 A. Yes.

13 Q. And for sewer operations the net effect of
14 contributions is to reduce original cost plan by
15 \$596,160; is that correct?

16 A. Correct.

17 MR. SPRINGER: Thank you. I have nothing further
18 at this for in Mr. Sant.

19 JUDGE KING: Redirect?

20 REICHART: If we could have a moment.

21 (Discussion off the record.)

22 JUDGE KING: Is there redirect?

1 MR. REICHART: Staff has no redirect.

2 MR. SPRINGER: Madam Examiner, at this time I'd

3 like to ask for admission of CIWC Cross-examination

4 Exhibit No. 1.

5 JUDGE KING: Any objection?

6 MR. REICHART: No objection.

7 JUDGE KING: Let the record reflect that CIWC

8 Cross-Examination Exhibit No. 1 is hereby admitted

9 into the record. Thank you Mr. Sant.

10 (Whereupon, CIWC

11 Cross-Examination

12 Exhibit No. 1 was

13 admitted into evidence.)

14 MR. SPRINGER: The next witness is

15 Mr. Ackman.

16 RICHARD ACKMAN,

17 called as a witness herein, having been first duly

18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY

21 MR. SPRINGER:

22 Q. Please state your name and business address.

1 A. Richard Ackman, I'm employed at the Ivanhoe
2 -- actually Thorngate Country Club d/b/a the Ivanhoe
3 Club 28846 North Thorngate Drive in Ivanhoe,
4 Illinois 60060.

5 Q. Mr. Ackman, what is your position with the
6 Thorngate Country Club?

7 A. General manager and chief operating officer.

8 Q. For purposes of this proceeding, did you
9 cause to be prepared testimony marked for
10 identification as CIWC Exhibit 2.0R?

11 A. Yes.

12 Q. Thank you. Is the information provided in
13 that testimony true and correct to the best of your
14 knowledge?

15 A. Yes, it is.

16 MR. SPRINGER: Madam Examiner, at this time I
17 would ask for admission into evidence Mr. Ackman's
18 rebuttal testimony marked as CIWC Exhibit 2.0R.

19 JUDGE KING: Is there any objection?

20 MR. REICHART: No, there is not.

21 JUDGE KING: Hearing no objection, let the record
22 reflect that CIWC Exhibit 2.0R is hereby admitted

1 into the record subject to cross

2 (Whereupon, CIWC

3 Exhibit No. 2.0R was

4 admitted into evidence.)

5 MR. SPRINGER: Mr. Ackman is tendered for
6 cross-examination with respect to that testimony.

7 CROSS EXAMINATION

8 BY

9 MR. HUCKMAN:

10 Q. I am Andrew Huckman representing the staff
11 of the Commission, I will have a few questions for
12 you, Mr. Ackman.

13 A moment ago you indicated that you are
14 the general manager and chief operating officer of
15 Thorngate. Did I correctly understand your
16 testimony that you are also the club manager from
17 1989 to 1994 before taking the current position?

18 A. That's correct.

19 Q. Also in your testimony do you indicate that
20 you're responsible for all of Thorngate's activities
21 including golf club operations, utility matters and
22 financial record keeping?

1 A. Yes, with the assistance of staff in the
2 record keeping department, obviously.

3 Q. Okay. And also in your testimony do you
4 indicate that in the course of your duties you are
5 familiar with Thorngate's books and records?

6 A. To a reasonable degree, yes.

7 Q. Thank you. Is it correct that Thorngate's
8 books and records are audited by the accounting firm
9 of Purnell, Kerr & Foster (ph), Certified Public
10 Accountants?

11 A. Up to a point in time and I can't recall the
12 exact year it was Palenker Forester (ph) and I
13 believe somewhere around 1980 -- I'm sorry -- 1994,
14 '95 range it was transferred to BDO Seidman.

15 Q. But the records that were provided to staff
16 in data requests were audited by a certified public
17 accounting firm?

18 A. Absolutely, yes.

19 Q. And did the certified public accounting
20 firms issue unqualified opinions specifically for
21 the years 1987 through 1989 which I understand were
22 years Purnell, Kerr & Foster were CPAs?

1 A. To the best of my knowledge, yes.

2 Q. Would you agree that an unqualified audit
3 opinion means that books and records are maintained
4 in accordance with generally accepted accounting
5 principles and that financial statements that you
6 have previously provided fairly present the
7 financial position of Thorngate Country Club?

8 A. Yes.

9 Q. Are these financial statements furnished to
10 Thorngate Country Club members each year as part of
11 the Thorngate Country Club annual report?

12 A. Yes, they are.

13 Q. Are these same accounting records used in
14 preparation of federal income tax returns for
15 Thorngate?

16 A. Yes.

17 Q. And also are these same accounting records
18 used in the preparation of state income tax returns
19 for Thorngate?

20 A. Yes.

21 Q. I want to refer you to your testimony,
22 specifically -- I'm sorry -- your rebuttal

1 testimony, specifically on page 3 near lines 11
2 through 14. Am I correct that you indicate
3 Thorngate transferred land to the developers in
4 exchange for the construction of a water system?

5 A. In part, it was part of the equation.

6 MR. HUCKMAN: Okay. May we go off the record for
7 a moment?

8 JUDGE KING: Sure.

9 (Discussion off the record.)

10 MR. HUCKMAN: Mr. Ackman, I'm about to refer
11 specifically to some figures which appear in the
12 record you have previously provided the Commission I
13 would request, Madam Examiner, that we make this an
14 in-camera proceeding during this portion of
15 cross-examination.

16 THE COURT: All right. We will do so.

17 (Discussion off the record.)

18 MR. HUCKMAN: Madam Examiner, my apologies. Upon
19 further reflection I think that we will be able to
20 continue without the need for in-camera proceedings.

21 JUDGE KING: Okay.

22 BY MR. HUCKMAN:

1 Q. In your testimony, do you agree that an
2 acreage of -- in your testimony on page 3 at
3 approximately lines 11 through 14 in the transaction
4 that you refer to there, would you agree that a
5 certain acreage of land was exchanged with the
6 developer for a certain amount in cash as well as
7 the construction of a water system and land
8 improvements?

9 A. Yes, I would agree.

10 Q. Did Thorngate incur a gain on this
11 transaction over its historical cost of land?

12 MR. SPRINGER: I'm going to enter an objection,
13 Madam Examiner. Mr. Ackman has addressed in his
14 rebuttal testimony a very narrow point. The
15 rebuttal testimony was submitted in response to a
16 position taken by Mr. Sant on direct wherein he
17 indicated, I believe, that the Thorngate accounting
18 records included costs for both water and sewer
19 facilities. Mr. Ackman was called for the very
20 limited purpose of indicating that the Thorngate
21 accounting records do not contain costs for any
22 water facilities, but only costs for sewer

1 facilities and that is the only point covered in his
2 testimony. That is the entire scope of his rebuttal
3 testimony and I do not believe Mr. Huckman's last
4 question pertains to that issue.

5 MR. HUCKMAN: In his rebuttal testimony he
6 discusses this transaction. It says, beginning at
7 line 11 on page 3, as Mr. Rakocy indicates Thorngate
8 transferred land to the developers of Ivanhoe Phase
9 2. In return, the developers constructed the water
10 system, parens, on Thorngate's property and in the
11 residential areas, end parens, and other
12 infrastructure and provided cash compensation. All
13 we're seeking to do is understand the nature of that
14 transaction.

15 MR. SPRINGER: I do not believe Mr. Huckman's
16 question goes to that, that is the basis of the
17 objection.

18 MR. HUCKMAN: We were asking about that
19 transaction, we're asking did you incur a gain on
20 the transaction. We're just looking to understand
21 these financial records a little bit better.

22 JUDGE KING: I'm going to overrule the objection.

1 BY MR. HUCKMAN:

2 Q. Mr. Ackman, repeating the question before
3 the objection, would you agree that Thorngate
4 incurred a gain on this transaction from its
5 historical path cost of the land at issue?

6 A. In my opinion I would not call it a gain, I
7 would call it a redirection of dollars into building
8 primarily what was the grand scope of our entire
9 facility. So dollars were expended in one venue and
10 expended in another venue in order to construct the
11 club.

12 So as far as a gain in the true sense of
13 the word, no.

14 Q. Was the amount of the dollars that you
15 received greater than the historical cost of that
16 land?

17 A. Yes.

18 Q. Without using figures, would you classify
19 that as significantly greater than that historical
20 cost of land?

21 A. In a qualified manner significantly greater
22 in the respect that, again going back to the grand

1 spectrum, the scope of the land that was transferred
2 to the developer changed in magnitude significantly
3 by being converted from rural property, undeveloped
4 rural property, to golf course perimeter residential
5 property. So its value was only accentuated by the
6 sheer creation of the entire environment.

7 Q. But it was a significantly different value
8 --

9 A. Oh, yes.

10 Q. -- taking that into account?

11 A. Yes.

12 Q. What I have called a gain and you called a
13 redirection of dollars, I believe, was this gain or
14 redirection of dollars reported in Thorngate's
15 computation of taxable income for the year of that
16 exchange?

17 A. Yes, it was.

18 Q. Would the cost basis for that land be the
19 cost that the land was -- I'm sorry -- the cost that
20 the land incurred by Thorngate?

21 A. I'm sorry?

22 Q. Would you agree that the cost basis of the

1 land in that transaction would have been at cost of
2 the land as originally incurred by Thorngate?

3 A. No.

4 Q. Could you explain why not?

5 A. If I understood your question correctly, was
6 the value of the land or was the price of the land
7 that we purchased the same price as what it was
8 sold; is that what you're referring to?

9 Q. In the records of Thorngate's when you talk
10 about this gain or the redirection of dollars, would
11 that land have been reflected in the record at the
12 cost of the land as incurred by Thorngate?

13 A. Again, I don't understand the question, I'm
14 missing something.

15 Q. After this transaction was the original cost
16 of this acreage of land was exchanged taken off of
17 Thorngate's books, the original cost?

18 A. I would assume that it was, I could not
19 guarantee that point. I would assume in the normal
20 accounting practices that that value of that acreage
21 would have been depleted and the gain recorded.

22 Q. I'd like to refer to page 3 of your

1 testimony again, near line 23. There you say that
2 in response that CIWC Exhibit 1.2R Mr. Sant
3 indicates that she was assured by Thorngate's
4 management that all capitalized costs of the water
5 and sewer systems were recorded in two accounts that
6 he refers to. When you talk about Thorngate's
7 management, are we referring to you specifically?

8 A. I'm assuming that I would be the one. I did
9 I speak with Mr. Sant.

10 Q. Did you have a phone conversation with Mr.
11 Sant or other members of the Commission staff
12 regarding the accounting records of Thorngate
13 Country Club?

14 A. Yes.

15 Q. In that phone conversation did you indicate
16 that the accounting records of Thorngate reflect
17 both water and sewer accounts?

18 A. This is an issue totally by misunderstanding
19 in our telephone conversation with Mr. Sant. My
20 common 10 year, 11 year, 12 year terminology to
21 these systems have been the sewer and water system
22 as a singular entity unlike what obviously the

1 purpose of this Commission's purposes is. So it is
2 not a question and we have never segregated sewer
3 and water to common terminology question, sewer and
4 water.

5 Q. Understanding that there may have been some
6 confusion on your end, nonetheless, it's likely that
7 you did use the term sewer and water?

8 A. Absolutely, it would be probable that I used
9 that.

10 Q. Also, are you aware of similar conversation
11 that Sara Winston of Thorngate staff may have had
12 with Commission staff as well?

13 A. Yes, I actually authorized Sara to cooperate
14 with Mr. Sant in whatever fashion she could,
15 understanding that she has only been with the club
16 for a period of less than a year, so with limited
17 expertise and history.

18 Q. And if Mr. Sant indicates in his testimony
19 that in that conversation again it was referenced to
20 records reflecting both the water and sewer accounts
21 would you have any reason to doubt that that
22 terminology was used?

1 A. No, absolutely not.

2 Q. I'd like to refer you to page 4 of your
3 testimony and look specifically around lines 4
4 to 8. Is it your position that capitalized costs on
5 Thorngate's records relate entirely to the sewer
6 system and that there are no costs reflected on
7 Thorngate's books related to the water system?

8 A. That's correct.

9 Q. Mr. Sant's testimony included an attachment
10 -- I'm sorry -- Mr. Sant's direct testimony, Exhibit
11 1.0, included an attachment which was labeled as
12 Schedule 3 a depreciation lapse Schedule of the
13 Ivanhoe Club. Is this material that you provided to
14 Mr. Sant?

15 A. I believe through Sara Winston, our
16 accountant, this was the document which was
17 provided.

18 MR. HUCKMAN: If I may approach the witness, I
19 would like to show him a copy of that schedule.

20 JUDGE KING: Sure.

21 BY MR. HUCKMAN:

22 Q. I would like to direct your attention to two

1 accounts on that schedule, one where there is an
2 asterisk that says last waste water and the second
3 also where there is an asterisk that says land waste
4 water and a second also where there is an asterisk
5 which says land improvements, WWTS 15 year S slash
6 L.

7 Is it your position that the amounts that
8 are reflected in these two accounts represent the
9 total capital investment made by Thorngate in the
10 waste water land and the waste water improvements
11 and that there is no investment recorded on the
12 books for the water system?

13 A. These two accounting entries are the ones
14 that we use primarily for -- yes, for the waste
15 water treatment facility. There could potentially
16 be other smaller issues that we have not kept in
17 conjunction, this not being a singular department in
18 our accounting procedures and, again, it's an
19 understanding that when we look at the sewer system,
20 we look at this -- have looked at it historically as
21 a water source for a fluorine irrigation. So in
22 many cases if a pump were to be replaced or a line

1 were to be replaced it's very likely those expenses
2 could be capitalized in our normal grounds and
3 greens department. So that's why there would only
4 be two here.

5 Q. And when you use --

6 A. Smaller capital expenses.

7 Q. And the term waste water is another way of
8 saying sewer system; is that correct?

9 A. Right.

10 Q. On page 4 around line 7 or 8 of your
11 rebuttal testimony you state there are no costs
12 reflected in either account for the water system; is
13 that correct?

14 A. That's correct.

15 Q. Has Thorngate made any other investment in
16 the water system not reflected on these books?

17 A. The only other investments that we have
18 probably made again would be involved in minor
19 repairs and in replenishments of pumps, piping and
20 issues of that nature.

21 Q. Would you describe that as a nominal amount?

22 MR. SPRINGER: I'm going to ask for a definition

1 of the term nominal amount.

2 MR. HUCKMAN: I'm going to withdraw the question
3 and ask instead: In the investment you just referred
4 to could you provide an estimate of those
5 expenditures, typically.

6 MR. SPRINGER: An estimate for an annual period
7 typically or what time period are we talking about.

8 BY MR. HUCKMAN:

9 Q. The particular schedule that we are -- that
10 you have in front of you, ICC Staff
11 Exhibit 1.0, Schedule 3 when you indicated that
12 there are no costs reflected for the water system,
13 you did indicate that it's possible other
14 investments might have been made by Thorngate which
15 you've described.

16 In terms of the time period covered in
17 this schedule could you give us a rough estimate of
18 what those amounts might be?

19 MR. SPRINGER: I'm going to object. I don't
20 really think a rough estimate is of any relevance in
21 this proceeding.

22 MR. HUCKMAN: Do you have actual -- I mean, I'm

1 trying to get -- we're talking potentially about
2 confidential records, I'm trying as a convenience
3 here not to force Mr. Ackman to give particular
4 number because that might necessitate an in-camera
5 proceeding. We're looking to understand an order of
6 magnitude when he said that they were sort of
7 smaller amounts compared to cost generally. I'm
8 just looking to try and get a rough sense so that we
9 might be able to say it's
10 X -- it's roughly a small percentage or roughly a
11 large percentage. If you'd like to give us exact
12 figures, that's fine.

13 MR. SPRINGER: If the witness has information he
14 can provide I withdraw my objection.

15 JUDGE KING: The witness can answer, if he can.

16 THE WITNESS: I think the only thing that I might
17 offer -- are we -- to clarify, we're talking
18 primarily about the sewer system dated between 1991
19 and current as indicated on the depreciation
20 schedule.

21 MR. HUCKMAN: Yes.

22 THE WITNESS: If you notice, there is one entry

1 in 1998 for \$253,484, that is what we would view as
2 something that would be explicitly notable for our
3 waste water system, which was the creation of a
4 ditch. That parcel -- and the reason I'm sure it's
5 not noted here is because that is not a
6 transferrable parcel within this transaction.

7 What our policy has been, maybe unlike
8 the normal, I have a grounds crew of 31 people and I
9 have a staff of mechanics and in-house repair people
10 and a building engineer and technician that
11 primarily take care of our facility in its entirety.
12 So it's not as if we have tracked time, effort,
13 cost, piping, pumps to that level. The only thing
14 that we would capitalize at any level regarding --
15 in a sheer capital sense -- would be the actual
16 physical cost of a product that was purchased for a
17 repair part and in nine times out of ten, in every
18 case obviously from these sheets, it's going to be
19 going against our irrigation capitalization
20 department of which we carry operating line items
21 and capital line items on our accounts.

22 So it's difficult to say this is how much

1 we're spending on an annual basis for repairs and
2 maintenance versus capital operations. It's very
3 difficult to come up with those numbers.

4 MR. HUCKMAN: Okay. That is all of my questions.
5 Thank you, Mr. Ackman.

6 MR. SPRINGER: May we have a short break?

7 JUDGE KING: Sure.

8 (Short break.)

9 JUDGE KING: Is there any redirect?

10 MR. SPRINGER: Yes, we do have some questions.

11 REDIRECT EXAMINATION

12 BY

13 MR. SPRINGER:

14 Q. Mr. Ackman, in response to Mr. Huckman's
15 questions, I believe you indicated that the value of
16 the land exchanged for the water system had been, in
17 your words, accentuated by its new environment; is
18 that correct?

19 A. Yes.

20 Q. Could you explain further what you meant in
21 responding to that question with those words?

22 A. Yes, absolutely. In the grand spectrum of

1 the creation of our community as we know today as
2 the Ivanhoe community we basically convert rural
3 undeveloped unincorporated properties into living
4 environments incorporated with a golf course
5 surrounding and setting. So by its sheer change,
6 the perimeter properties become incredibly value in
7 proportion for the residential units, the numbers
8 escalate dramatically.

9 The big spectrum is going into the
10 creation of all the infrastructure that's required
11 to support these things so it's not just build a
12 golf course, build the homes. It's build the golf
13 course, build the homes, set up the community, make
14 sure the infrastructure is intact, there is a
15 multitude of things that go into it. But just by
16 the sheer nature of creating lots adjacent and
17 butting up to a golf course environment accentuates
18 the value of the property dramatically.

19 Q. And would the circumstances you've discussed
20 account for a difference between the amount which is
21 the value of the property at the time of its
22 exchange as compared to its original cost?

1 A. Absolutely.

2 Q. Also in response to Mr. Huckman's questions
3 I believe you indicated that the cost capitalized in
4 the two accounts referenced on Schedule 3 do not
5 include all of the capitalized costs associated with
6 water or sewer operations; is that correct?

7 A. That's correct.

8 Q. And would you explain further what items of
9 cost that relate to the water and sewer operation
10 would not be reflected in the account shown on
11 Schedule 3?

12 A. I can cite a few examples. As I stated
13 before, we don't segregate these to these two as
14 individual departments, so it's much more difficult
15 for us to track. A couple of examples were about
16 three or four years ago we experienced a problem
17 removing the flow of water from the sewer system and
18 getting it to the sprayer irrigation fields on the
19 golf course so we had to install roughly \$60,000
20 worth of hard equipment and a lot of in-house labor
21 and whatnot in order to make this transfer. That
22 equipment still exists, it has become part of our

1 irrigation system, but it lies and is contained
2 actually on the property known as the sewer lagoons.
3 We have over the course of the last ten years
4 replaced in the vicinity of -- and I'm guessing in
5 this respect -- five, six, seven grinder pumps in
6 the different lift stations that occur around the
7 perimeter of the community which are the
8 responsibility of the Ivanhoe club.

9 We have replaced three variable speed
10 pumps which are quite expensive in the fresh water
11 distribution system. A couple of them through a
12 lighting strike were, thankfully, covered by
13 insurance, one of them, I believe, if I recall
14 correctly, that we had paid for directly.

15 We have incurred a number of smaller
16 items, those are a few that come to mind of a larger
17 nature. But to be perfectly honest, it's one of the
18 reasons why we want to get out of the sewer and
19 water business, it's kind of our objective, to put
20 this behind us. But the costs just keep going.

21 I am satisfied at some point in time if
22 it were required -- I don't know how meaningful it

1 honestly would be -- but it would probably be
2 possible to provide some sort of record systems that
3 would isolate these items individually and it would
4 take a significant amount of accounting work to do
5 it, but I think that information could probably be
6 provided from a factual standpoint.

7 Q. And it's the case that for the water and
8 sewer system there are no separate books of accounts
9 maintained?

10 A. No.

11 MR. SPRINGER: Thank you. I have nothing
12 further.

13 JUDGE KING: Recross?

14 MR. HUCKMAN: We have nothing.

15 JUDGE KING: Madam Examiner, based on
16 Mr. Ackman's testimony I think I may be able to
17 eliminate some of the cross that I had for the
18 second company witness and, in addition, I do have
19 to put together agreed -- or an exhibit that will be
20 entered by agreement, it's just some DR responses
21 that I believe the company has agreed to but I
22 haven't had a chance to put those together. Could

1 we take maybe, if it's okay with you, maybe ten
2 minutes and I will work to eliminate questions and
3 put together this exhibit and then hopefully we can
4 wrap things up?

5 JUDGE KING: Sure. You would contemplate how
6 long for cross?

7 MR. HUCKMAN: I think I can eliminate it
8 to -- or narrow it down to about between ten and
9 twenty minutes.

10 JUDGE KING: That's fine, we can take a
11 ten-minute break right now.

12 (Short break.)

13 JUDGE KING: Back on the record.

14 MR. SPRINGER: Fats our next witness will be Mr.
15 Rakocy.

16 TERRY RAKOCY,
17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY

21 MR. SPRINGER:

22 Q. Please state your name and business address.

1 A. Terry Rakocy 1000 South Skyler, Kankakee,
2 Illinois, 60914.

3 Q. Mr. Rakocy, what is your position with -- by
4 whom are you employed?

5 A. I am employed by Consumers Illinois Water
6 Company.

7 Q. What is your position with that company?

8 A. President of Consumers Illinois.

9 Q. Have you prepared certain testimony for
10 purposes of this proceeding?

11 A. Yes, I have.

12 Q. I show you a copy of what has been marked
13 for identification as CIWC Exhibit 1.0 entitled
14 direct testimony of Terry J. Rakocy and ask if that
15 is a copy of your prepared direct testimony?

16 A. Yes, it is.

17 Q. And in the course of that testimony do you
18 sponsor certain exhibits?

19 A. Yes, I do.

20 Q. And have those exhibits been marked for
21 identification as CIWC exhibits A through H?

22 A. Yes.

1 Q. Have you also prepared for this proceeding a
2 copy of rebuttal testimony which has been marked for
3 identification as CIWC Exhibit 1.0R entitled
4 rebuttal testimony of
5 Terry J. Rakocy?

6 A. Yes, I have.

7 Q. And in the course of that testimony do you
8 sponsor some exhibits?

9 A. Yes, I do.

10 Q. Have those exhibits been marked as CIWC
11 Exhibits 1.1R, 1.2R 1.3R, F revised pages 2 and 6, G
12 revised and H revised?

13 A. Yes.

14 Q. Have you also prepared for this proceeding
15 surrebuttal testimony marked for identification as
16 CIWC 1.0SR?

17 A. Yes, I have.

18 Q. And in the course of that testimony, do you
19 sponsor what's been marked for identification as
20 CIWC Exhibits 1.1SR, 1.2SR and 1.3SR?

21 A. Yes.

22 Q. Have you also prepared for this proceeding

1 additional surrebuttal testimony marked for
2 identification as Exhibit 1.0AS?

3 A. Yes, I have.

4 Q. And in the course of that testimony do you
5 sponsor what's been marked for identification as
6 Exhibit 1.1AS?

7 A. Yes, I have.

8 Q. And is the information contained in the
9 testimonies and exhibits which you sponsor true and
10 correct to the best of your knowledge?

11 A. Yes, they are.

12 MR. SPRINGER: At this time, Madam Examiner, I
13 would ask for admission into evidence
14 Mr. Rakocy's prepared direct testimony, CIWC Exhibit
15 1.0, and Exhibits A through H which accompany that
16 testimony, Mr. Rakocy's rebuttal testimony marked as
17 CIWC Exhibit is 1.0R and Exhibits 1.1R, 1.2R, 1.3R,
18 F revised pages 2
19 and 6, G revised and H revised which accompany that
20 testimony, Mr. Rakocy's surrebuttal testimony
21 Exhibit 1.0SR and Exhibits 1.1SR 1.2SR and 1.3SR
22 which accompany that testimony and finally

1 Mr. Rakocy's additional surrebuttal testimony,
2 Exhibit 1.0AS and Exhibit 1.1AS which accompanies
3 that testimony.

4 JUDGE KING: Any objection?

5 MR. REICHART: Just one point of clarification.
6 I don't think we are familiar with the attachment to
7 the additional surrebuttal testimony.

8 MR. SPRINGER: That was sent over by hard copy
9 separate from the e-mail and it's a data response
10 that's identified in the testimony.

11 MR. REICHART: We don't have any objection.

12 MR. SPRINGER: Can I ask one additional question,
13 I missed one exhibit, Madam Examiner.

14 JUDGE KING: Okay.

15 BY MR. SPRINGER:

16 Q. Mr. Rakocy, also attached to your rebuttal
17 testimony is there an Exhibit 1.4R?

18 A. Yes, there is.

19 Q. An is that exhibit true and correct to the
20 best of your knowledge?

21 A. Yes, it is.

22 MR. SPRINGER: I would also like to add to my

1 request for admission Exhibit 1.4R, which is
2 attached to Exhibit 1.0R.

3 JUDGE KING: All right. Let the record reflect
4 that CIWC Exhibits 1.0 with its attachments, 1.0R
5 with its attachments, 1.0SR with its attachments and
6 1.0AS with its attachments are hereby admitted into
7 the record.

8

9 (Whereupon, CIWC Exhibit
10 Nos. 1.0, 1.0R, 1.0SR and
11 1.0AS were
12 admitted into evidence.)

13 MR. SPRINGER: Mr. Rakocy is available for
14 cross-examination.

15 MR. REICHART: Staff does have a few questions.

16 CROSS EXAMINATION

17 BY

18 MR. REICHART:

19 Q. Good afternoon, Mr. Rakocy, my name is John
20 Reichart and I represent staff and I've eliminated a
21 good number of the questions I originally had for
22 you this afternoon. I think in some cases I may

1 have also eliminated the original reference points,
2 but I think generally speaking we should be able to
3 follow these. If you have a specific question about
4 where in the testimony you should be referring, ask
5 me that please and I'll go back and take some time
6 to find it.

7 My first question is one of those that I
8 think can be answered generally.

9 Are you aware if Mutual Service is
10 commonly referred to as the Home Owners Association?

11 A. No, they are not. There are actually two
12 homeowner's associations and the two homeowner's
13 associations make up the Mutual Water and Sewer
14 Association. They have representatives on that
15 board.

16 Q. Do you know the names of two homeowner's
17 associations?

18 A. I have only been referring to them as the
19 Phase 2 and Phase 3 Associations, but I'm not sure
20 that that is their official titles.

21 Q. Would you agree that it's Thorngate Club
22 that provides water and sewer service at Homeowner's

1 and not the Mutual Services?

2 A. Yes.

3 Q. Mr. Rakocy, I believe in your rebuttal
4 testimony you state that Staff's proposal creates a
5 disincentive for large systems such as Consumers
6 from acquiring smaller systems like Thorngate; is
7 that correct?

8 A. That's correct.

9 Q. Is it your position that Staff's case taken
10 as a whole results in such a disincentive in this
11 particular docket?

12 A. Yes, I do.

13 Q. And if Staff's case taken as a whole were
14 accepted by the hearing examiner through the HEPO
15 would Consumers attempt to withdraw its petition as
16 a result of that?

17 A. We would have to obviously step back and
18 take another look at this total package because what
19 is being presented here is rate base on the sewer
20 side where we could earn a return and no opportunity
21 to earn a return on the water side. And since those
22 would be separate tariffs we would have to evaluate

1 what the ultimate outcome is.

2 Q. I'd like to refer you to your direct
3 testimony, actually it's the exhibits that follow
4 the original filing, Exhibits C and D attached to
5 your direct testimony. These are the terms and
6 conditions of the sale of the water and sewer system
7 to Consumers; is that correct?

8 A. Yes, it is.

9 Q. Now, is it correct that Consumers is paying
10 \$200 for the entire system, that's \$100 for the
11 water system and \$100 for the sewer system?

12 A. That is correct.

13 Q. Referring to your rebuttal testimony,
14 specifically Exhibit G revised, page 3 of 3.
15 Looking at this chart, would you agree that Exhibit
16 G projects an operating income after taxes of
17 \$16,823 in the fifth year of operations for the
18 water and sewer system?

19 A. It does indicate that.

20 MR. REICHART: Thank you, that's all we have.

21 JUDGE KING: Any redirect?

22 MR. SPRINGER: Can we have just one minute, Madam

1 Examiner?

2 (Discussion off the record.)

3 MR. SPRINGER: Yes, Madam Examiner.

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6

7 REDIRECT EXAMINATION

8 BY

9 MR. SPRINGER:

10 Q. Mr. Rakocy, you were asked by
11 Mr. Reichart about the figure shown on Exhibit G
12 revised, page 3, for the consolidated operating
13 income for the Ivanhoe Club Development; is that
14 correct?

15 A. That's correct.

16 Q. Would you comment on whether you believe
17 that figure is the significant figure to consider in
18 evaluating the incentives provided by Staff's
19 proposal?

20 A. Yes, in looking at our tariffed areas within
21 the state, every operation is an independent tariff
22 and in this particular case Ivanhoe would be made up

1 of two separate tariffs and two separate operations,
2 one for water, one for waste water; and although the
3 water system would deliver revenue and operating
4 income, the sewer system would be a negative 24,000
5 even though combined it was a 16. But the way we
6 are regulated they are two separate methodologies.

7 Q. As shown on Exhibit G, page 2 revised, there
8 is a negative operating income forecasted for waste
9 water operations?

10 A. Yes.

11 Q. And that would be true for both year one and
12 year five; is that correct?

13 A. That's correct.

14 Q. And a positive operating income is shown
15 only for water operations on page 1 of the exhibit;
16 is that correct?

17 A. That's correct.

18 MR. SPRINGER: I have nothing further.

19 MR. REICHART: We have nothing.

20 JUDGE KING: Thank you, Mr. Rakocy.

21 MR. REICHART: Madam Examiner, we have one final
22 exhibit to enter into the record, it's been marked

1 as ICC Staff Exhibit 6.0. it consists of a number
2 of data request responses from the company as well
3 as one page of accounting instructions. I believe
4 there is no objection to this exhibit being entered
5 and I will provide you with a copy.

6 JUDGE KING: Hearing no objection I will indicate
7 for the record that Staff Exhibit 6.0 is hereby
8 admitted into the record.

9 (Whereupon, Staff
10 Exhibit No. 6.0 was
11 admitted into evidence.)

12 JUDGE KING: Is there anything further? I guess
13 we need to set a schedule and we'll go off the
14 record.

15 (Discussion off the record.)

16 JUDGE KING: Okay. Back on the record. We have
17 had some discussion concerning the briefing
18 schedule. The parties have agreed to submit or file
19 in-hand on December 21st simultaneous initial briefs
20 with reply briefs to be filed simultaneously January
21 17 of 2001. And if there is nothing further in this
22 matter I'm going to ask that the record be marked

1 heard and taken and bring everything to a close with

2 a thank you to everyone.

3 (Heard and Taken.)

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